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18 ***Pro Hac Vice Motion To Be Filed***

19
20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN JOSE DIVISION**

23
24 **ALICIA BLACK**, individually and on
25 behalf of all others similarly situated,

26 Plaintiff

27 -against-

28 **USCB, INC., d/b/a USCB AMERICA,**

29 Defendant

30 Civil Case No.:

31
32 **CIVIL ACTION**
33
34 **CLASS ACTION COMPLAINT**
35 **and**
36 **JURY TRIAL DEMAND**

1 Plaintiff ALICIA BLACK (hereinafter, "Plaintiff"), a California resident,
2 brings this class action complaint by and through the undersigned attorneys,
3 against Defendant USCB, INC. d/b/a USCB AMERICA (hereinafter "Defendant"
4 or "USCB"), for its violations of the Fair Debt Collection Practices Act 15 U.S.C.
5 §1692 (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices
6 Act, California Civil Code §§ 1788 et seq. (hereinafter "RFDCPA"), individually
7 and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the
8 Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's
9 counsel, except for allegations specifically pertaining to Plaintiff, which are based
10 upon Plaintiff's personal knowledge.
11

12 **INTRODUCTION/PRELIMINARY STATEMENT**
13

14

15 1. Congress enacted the FDCPA in 1977 in response to the "abundant evidence
16 of the use of abusive, deceptive, and unfair debt collection practices by many
17 debt collectors." 15 U.S.C. § 1692(a). At that time, Congress was concerned
18 that "abusive debt collection practices contribute to the number of personal
19 bankruptcies, to material instability, to the loss of jobs, and to invasions of
20 individual privacy." *Id.* Congress concluded that "existing laws . . . [we]re
21 inadequate to protect consumers," and that "the effective collection of debts"
22 does not require "misrepresentation or other abusive debt collection
23 practices." 15 U.S.C. §§ 1692(b) & (c).

24

25 2. Congress explained that the purpose of the Act was not only to eliminate
26 abusive debt collection practices, but also to "insure that those debt
27 collectors who refrain from using abusive debt collection practices are not
28 competitively disadvantaged." *Id.* § 1692(e). After determining that the

1 existing consumer protection laws were inadequate, *id.* § 1692(b), Congress
2 gave consumers a private cause of action against debt collectors who fail to
3 comply with the Act. *Id.* § 1692k.

4

5 3. One of the purposes of the Rosenthal Fair Debt Collection Practices Act,
6 California Civil Code § 1788 is to similarly prohibit debt collectors from
7 engaging in unfair or deceptive acts or practices in the collection of
8 consumer debts.

9

10 **JURISDICTION AND VENUE**

11

12 4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15
13 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has
14 pendent jurisdiction over the state law claims in this action pursuant to 28
15 U.S.C. § 1367(a).

16 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b)(2).

17

18 **NATURE OF THE ACTION**

19

20 6. Plaintiff brings this class action on behalf of a class of California
21 consumers seeking redress for Defendant's actions of using false, deceptive
22 and misleading representation or means in connection with the collection of
23 an alleged debt.

24 7. Defendant's actions violated § 1692 *et seq.* of Title 15 of the United States
25 Code, commonly referred to as the Fair Debt Collections Practices Act
26 ("FDCPA"), which prohibits debt collectors from engaging in false,
27 deceptive or misleading practices.

28

- 1 8. Defendant's actions violated California Civil Code § 1788 et seq. of the
- 2 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), which
- 3 prohibits debt collectors from engaging in unfair or deceptive acts or
- 4 practices in the collection of consumer debts.
- 5 9. Plaintiff is seeking damages, and declaratory and injunctive relief.

7 **PARTIES**

- 9 10. Plaintiff is a natural person and a resident of Santa Clara County in the State
- 10 of California, and is a "Consumer" as defined by 15 U.S.C. §1692(a)(3).
- 11 11. Defendant USCB is a collection agency with its registered office located at
- 12 355 South Grand Avenue, Suite 3200, Los Angeles, California 90071.
- 13 12. Upon information and belief, Defendant is a company that uses the mail,
- 14 telephone, or facsimile in a business the principal purpose of which is the
- 15 collection of debts, or that regularly collects or attempts to collect debts
- 16 alleged to be due another.
- 17 13. Defendant is a "debt collector," as defined under the FDCPA under 15
- 18 U.S.C. § 1692a(6).

20 **ALLEGATIONS OF FACT**

- 22 14. Plaintiff repeats, reiterates and incorporates the allegations contained in
- 23 paragraphs above herein with the same force and effect as if the same were
- 24 set forth at length herein.
- 25 15. Some time prior to March 15, 2017, an obligation was allegedly incurred to
- 26 UCLA HEALTH SYSTEM ("UCLA").
- 27 16. The UCLA obligation arose out of a transaction in which money, property,
- 28 insurance or services, which are the subject of the transaction, are primarily

1 for personal, family or household purposes.

2 17. The alleged UCLA obligation is a "debt" as defined by 15 U.S.C. § 1692a(5).

3 18. UCLA is a "creditor" as defined by 15 U.S.C. § 1692a(4).

4 19. Defendant contends that the UCLA debt is past due.

5 20. Defendant is a company that uses mail, telephone or facsimile in a business
6 the principal purpose of which is the collection of debts, or that regularly
7 collects or attempts to collect debts incurred or alleged to have been incurred
8 for personal, family or household purposes on behalf of creditors.

9 21. UCLA directly or through an intermediary contracted the Defendant to
10 collect the alleged debt.

11 22. On or about March 15, 2017, the Defendant caused to be delivered to the
12 Plaintiff a collection letter in an attempt to collect the alleged UCLA debt.

13 *See Exhibit A.*

14 23. The March 15, 2017 letter was sent or caused to be sent by persons employed
15 by Defendant as a "debt collector" as defined by 15 U.S.C. §1692a(6).

16 24. The March 15, 2017 letter is a "communication" as defined by 15 U.S.C.
17 §1692a(2).

18 25. Upon information and belief, the March 15, 2017 was the first
19 communication from USCB to the Plaintiff with regards to the UCLA debt.

20 26. The Plaintiff received and read the Letter sometime after March 15, 2017.

21 27. The Letter stated in part:

22 "ORIGINAL CREDITOR NAME: UCLA HEALTH SYSTEM"

23 28. Although the Letter identifies the original creditor to whom the alleged debt
24 incurred, the Letter fails to explicitly or implicitly identify Plaintiff's current
25 creditor.

26 29. The Plaintiff, as would any least sophisticated consumer, was left unsure as
27 to what creditor UCLA was attempting to collect for.

1 30.Pursuant to 15 U.S.C. §1692g, a debt collector is required in the initial
2 communication with a consumer, to identify the name of the current creditor
3 to whom the debt is owed.

4 31.The obligation is not only to identify the name of the current creditor, but to
5 convey the name of the current creditor clearly and explicitly.

6 32.“Thus, in order to comply with the requirements of section 1692g, more is
7 required than the mere inclusion of the statutory debt validation notice in the
8 debt collection letter, the required notice must also be conveyed effectively
9 to the debtor” *See Graziano v. Harrison, 950 F.2d 107, 111 (3d Cir.1991)*.
10 Moreover, the validation notice required by the Act “is to be interpreted from
11 the perspective of the ‘least sophisticated debtor.’” *Graziano, 950 F.2d at*
12 *111*

13 33.Merely naming the original creditor does not clearly convey to the consumer
14 who the current creditor is.

16 34.Congress adopted the debt validation provisions of section 1692g to
17 guarantee that consumers would receive adequate notice of their rights under
18 the FDCPA. *Wilson, 225 F.3d at 354, citing Miller v. Payco-General Am.*
19 *Credits, Inc., 943 F.2d 482, 484 (4th Cir.1991)*.

20 35.Congress further desired to “eliminate the recurring problem of debt
21 collectors dunning the wrong person or attempting to collect debts which the
22 consumer has already paid.” S.Rep. No. 95-382, at 4 (1977), reprinted in
23 1977 U.S.C.C.A.N. 1695, 1699.

24 36.The rights afforded to consumers under Section 1692g(a) are amongst the
25 most powerful protections provided by the FDCPA.

26 37.As a result of the Defendant’s violations of the FDCPA, the Plaintiff was
27 harmed.

28 38.Defendant’s actions as described herein are part of a pattern and practice used

1 to collect consumer debts.

2 39. Defendant could have taken the steps necessary to bring its actions within
3 compliance with the FDCPA, but neglected to do so and failed to
4 adequately review its actions to ensure compliance with the law.

5
6 **CLASS ALLEGATIONS**
7

8 40. Plaintiff brings claims, pursuant to the Federal Rules of Civil Procedure
9 (hereinafter “FRCP”) Rule 23, individually and on behalf of the following
10 consumer class (the “Class”) consisting of: a) All consumers who have an
11 address in Santa Clara County in the state of California b) who were sent a
12 collection letter from the Defendant c) attempting to collect a consumer debt d)
13 which fails to adequately name the current creditor to whom the debt is owed (e)
14 which letter was sent on or after a date one year prior to the filing of this action
15 and on or before a date 21 days after the filing of this action.

16 41. The identities of all class members are readily ascertainable from the
17 records of Defendants and those companies and entities on whose behalf they
18 attempt to collect and/or have purchased debts.

19 42. Excluded from the Plaintiff Classes are the Defendants and all officers,
20 members, partners, managers, directors, and employees of the Defendants and
21 their respective immediate families, and legal counsel for all parties to this
22 action and all members of their immediate families.

23 43. There are questions of law and fact common to the Plaintiff Classes, which
24 common issues predominate over any issues involving only individual class
25 members. The principal issue is whether the Defendants’ written
26 communications to consumers, in the forms attached as ***Exhibit A***, violate 15
27 U.S.C. § 1692e and § 1692g.

1 44. The Plaintiffs' claims are typical of the class members, as all are based
2 upon the same facts and legal theories.

3 45. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff
4 Classes defined in this complaint. The Plaintiffs have retained counsel with
5 experience in handling consumer lawsuits, complex legal issues, and class
6 actions, and neither the Plaintiffs nor their attorneys have any interests, which
7 might cause them not to vigorously pursue this action.

8 46. This action has been brought, and may properly be maintained, as a class
9 action pursuant to the provisions of Rule 23 of the Federal Rules of Civil
10 Procedure because there is a well-defined community interest in the litigation:

11 (a) **Numerosity:** The Plaintiffs are informed and believe, and on that
12 basis allege, that the Plaintiff Classes defined above are so numerous
13 that joinder of all members would be impractical.

14 (b) **Common Questions Predominate:** Common questions of law and
15 fact exist as to all members of the Plaintiff Classes and those questions
16 predominate over any questions or issues involving only individual
17 class members. The principal issue is whether the Defendants' written
18 communications to consumers, in the forms attached as ***Exhibit A***,
19 violate 15 U.S.C. § 1692e and § 1692g.

20 (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class
21 members. The Plaintiffs and all members of the Plaintiff Classes have
22 claims arising out of the Defendants' common uniform course of
23 conduct complained of herein.

24 (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the
25 interests of the class members insofar as Plaintiffs have no interests
26 that are averse to the absent class members. The Plaintiffs are
27 committed to vigorously litigating this matter. Plaintiffs have also

1 retained counsel experienced in handling consumer lawsuits, complex
 2 legal issues, and class actions. Neither the Plaintiffs nor their counsel
 3 have any interests which might cause them not to vigorously pursue
 4 the instant class action lawsuit.

5 (e) **Superiority:** A class action is superior to the other available means
 6 for the fair and efficient adjudication of this controversy because
 7 individual joinder of all members would be impracticable. Class
 8 action treatment will permit a large number of similarly situated
 9 persons to prosecute their common claims in a single forum efficiently
 10 and without unnecessary duplication of effort and expense that
 11 individual actions would engender.

12 47. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil
 13 Procedure is also appropriate in that the questions of law and fact common to
 14 members of the Plaintiff Classes predominate over any questions affecting an
 15 individual member, and a class action is superior to other available methods
 16 for the fair and efficient adjudication of the controversy.

17 48. Depending on the outcome of further investigation and discovery, Plaintiffs
 18 may, at the time of class certification motion, seek to certify a class(es) only as
 19 to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

20
 21
 22 **COUNT I**

23 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

24 **15 U.S.C. §1692e *et seq.***

25 49. Plaintiff repeats, reiterates and incorporates the allegations contained in
 26 paragraphs above herein with the same force and effect as if the same were
 27 set forth at length herein.

28 50. Defendants' debt collection efforts attempted and/or directed towards the

1 Plaintiff violated various provisions of the FDCPA, including but not
2 limited to 15 U.S.C. § 1692e.

3 Pursuant to 15 U.S.C. § 1692e, a debt collector may not use any false,
4 misleading and/or deceptive means to collect or attempt to collect any
5 debt or to obtain information concerning a consumer.

6 The Defendants violated said section in its letter to the Plaintiff by:

- 7 a. Using a false, deceptive, and misleading representations or
8 means in connection with the collection of a debt;
- 9 b. Making a false representation or using deceptive means to collect
10 a debt in violation of 1692e(10).

11 53. By reason thereof, Defendant is liable to Plaintiff for judgment that
12 Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual
13 damages, statutory damages, costs and attorneys' fees.

14 **COUNT II**

15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

16 **15 U.S.C. §1692g *et seq.***

17 54. Plaintiff repeats, reiterates and incorporates the allegations contained in
18 paragraphs above herein with the same force and effect as if the same were
19 set forth at length herein.

20 55. Defendant's debt collection efforts attempted and/or directed towards the
21 Plaintiff violated various provisions of the FDCPA, including but not limited
22 to 15 U.S.C. § 1692g.

23 56. Pursuant to 15 USC §1692g, a debt collector:

- 24 (a) Within five days after the initial communication with a consumer
25 in connection with the collection of any debt, a debt collector shall,

unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

(2) The name of the creditor to whom the debt is owed

57. The Defendant violated 1692g(a)(2) by failing to name the creditor to whom the debt is owed.

58. By reason thereof, Defendant is liable to Plaintiff for judgment that Defendant's conduct violated Section 1692g *et seq.* of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

COUNT III

(Violations Of The Rosenthal Fair Debt Collection Practices Act)

59. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs above herein with the same force and effect as if the same were set forth at length herein.

60. Cal. Civ. Code §1788.17 mandates that every person or entity collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

61. As set forth above, Defendant violated 15 U.S.C. § 1692e(10) by making a false representation and using deceptive and misleading means to collect a debt.

62. As set forth above, Defendant violated 15 U.S.C. § 1692g(a)(2) by failing to clearly and concisely convey the name of the creditor to whom the alleged debt is owed.

1 63. As such, Defendant violated the foregoing provisions of the FDCPA and
2 RFDCPA.

3 64. As a direct and proximate result of Defendant's violations of the RFDCPA
4 and FDCPA, Plaintiff was harmed, and may recover from Defendant one
5 thousand dollars (\$1,000.00) in statutory damages in addition to actual
6 damages and reasonable attorneys' fees and costs pursuant to Cal. Civ.
7 Code § 1788.30.

8

9 **DEMAND FOR TRIAL BY JURY**

10 65. Pursuant to Rule 38 of the Federal Rules of Civil Procedure,
11 Plaintiff hereby request a trial by jury on all issues so triable.

12

13 **PRAYER FOR RELIEF**

14 16 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

15 17 (a) Declaring that this action is properly maintainable as a Class
18 Action and certifying Plaintiff as Class representative and the undersigned as
19 Class Counsel;

20 21 (b) Awarding Plaintiff and the Class statutory damages;
22 (c) Awarding Plaintiff and the Class actual damages;
23 (d) Awarding Plaintiff costs of this Action, including reasonable
attorneys' fees and expenses;

24 25 (e) Awarding pre-judgment interest and post-judgment interest;
and

26 27 (f) Awarding Plaintiff and the Class such other and further relief
as this Court may deem just and proper.

1
2 Dated: February 1, 2018
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/s/ Jonathan A. Stieglitz
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